1997

Pyro Techniques: A Time to Burn Some of the Bramble Bushes

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PYRO TECHNIQUES: A TIME TO BURN SOME OF THE BRAMBLE BUSHES?

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Does stress in law school do more damage than we realize? Should we do more to warn students of the possible negative effects of law school teaching? Might it even be argued that our methods plant seeds for the profession's problems with declining civility, increasing substance abuse, and spreading mid-career burnout? Those questions arose from a study which used qualitative methods to study a professor who has been given numerous teaching awards by students.[2] The professor was chosen from a school outside the top twenty law schools since the other 160 are where most future lawyers are educated. This study's original goal was to present data about teaching that would facilitate reflection on how all of us can become better teachers, especially teaching after the first year of law school. However, during the process of data analysis, the overall conclusion became broader and far different from what was initially contemplated. In the author's opinion, this professor's teaching is best understood as an attempt to address the effects of stress in law school. The study therefore provides further support for calls to modify law school teaching.

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[2]*See infra* Part II.

Seeing stress as a part of legal education, of course, is no new insight. One has to read only a little of Karl Llewellyn's classic book, the *Bramble Bush*,[3] to see some of its sources. As the title indicates, law school could be likened to a bramble patch that would scratch and tear at the students as they worked their way through it.[4] The justification for the process was pragmatic.[5] Whatever one thought of the process, it worked. Modern research likewise supports the proposition that traditional legal education methods are quite effective. Students apparently learn most of their legal thinking skills in the first year.[6]

It would be impossible to eliminate all stress from law school. Some is unavoidable. Changing the way one thinks changes the most intimate part of a person. Under the best of circumstances, those fundamental changes come hard. Thus, it is a stressful process for both the student and the teacher. However, additional stress typically is added by the type of teaching and testing methods employed. This use of stress is no surprise since stress is a well known prescription for prodding persons to achieve their peak performance. Less well known, and typically not taught in law school, are the costs or side effects associated with the use of stress. The danger exists that law school, by modeling the use of stress, will teach students to use stress as a tool. If students do not know the potentially dangerous side effects of stress, then it is as if we have taught them to use an effective drug without knowing its possible negative implications. In other words, some stress is inevitable, and it is a highly effective tool. Similar to a drug, however, too much stress is a problem and routine use may result in addiction. According to the research, the analogy to drug usage fits all too well with the use and effects of stress in law school.

Studying stress was not part of the research design for this article. As noted previously, the original purpose of this study was far removed from calls to burn bramble bushes. Originally, this study was to address three gaps in the literature on legal education. First, to illustrate the use of qualitative research methods which are rarely seen in legal literature but which have close links to our common law backgrounds. Second, it was to study teaching in a setting underrepresented in the literature, a school which is not in the top twenty law schools, but in the "other 160" where most future attorneys are educated. Third, it was to take seriously our claim to learn from our students and therefore, take the uncommon step of using awards given by students to select the professor for study. The overall goal was to provide detailed facts about one example of

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[3] *See generally* KARL N. LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND IT'S STUDY (1960). Later articles echo concerns about stress. For a recent example see Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593 (1996).

[4] *Id.*

[5] *Id.*

[6] David P. Bryden, *What Do Law Students Learn? A Pilot Study*, 34 J. LEGAL EDUC. 479 (1984); Charles J. Senger, Learning Legal Reasoning in Law School: The Differences Between First and Third Year Students (1989) (unpublished Ph.D. dissertation, Michigan State University) (on file with Michigan State University Library).

excellent teaching; reflecting on those facts was to help all of us become even better teachers.

The professor studied here, Philip J. Prygoski, has won teaching awards from students at Wisconsin, Tennessee, and Cooley. The awards cut across a wide spectrum of legal education. Likewise, his published works span a wide range of journals.[7] A combination of these facts rendered Professor Prygoshi the ideal candidate for this study. If law students learned most of their thinking skills in the first year of law school, then it would be interesting to see how a professor in the second year would make the best use of the time. Looking closely at his teaching, at the very least, would yield insights into what students value.

At first glance, the results were disappointing due to the fact the teaching style was not what had been originally contemplated. For example, Professor Prygoski seemed to demand too little of the students and his word choices seemed closer to street slang than the usual classroom cant. It turns out that his teaching decisions can be explained in terms of addressing prior effects of stress on the students but initial impressions were very misleading.

The balance of this article is divided into three parts. The first part briefly explains the qualitative research methods used. This explanation grounds the validity of methods which are far different from the quantitative methods typically seen in law school literature. It also connects those methods to our background as law professors. The second part presents the research findings regarding the setting, the participants, and the classroom teaching itself. This description includes a number of transcript excerpts. Finally, the third part is a general discussion including guidelines drawn both from the previous pioneer work of Charles D. Kelso[8] and from educational psychology. This discussion will address both the original goal of this study, the implications for our own teaching, and the implications for legal education more generally that became apparent in the course of the study.

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[7]Philip J. Prygoski, *The Implications of* Davis v. Davis *for Reproductive Rights Analysis*, 61 TENN. L. REV. 609 (1994); Philip J. Prygoski, *Abortion and the Right to Die: Judicial Imposition of a Theory of Life*, 23 SETON HALL L. REV. 67 (1992); Philip J. Prygoski, *The Supreme Court's "Secondary Effects" Analysis in Free Speech Cases*, 6 COOLEY L. REV. 1 (1989); Philip J. Prygoski, *Low-Value Speech: From Young to Fraser*, 32 ST. LOUIS U. L.J. 317 (1987); Philip J. Prygoski, *Justice Sanford and Modern Free Speech: Back to the Future?*, 75 KY. L.J. 45 (1986); Philip J. Prygoski, *When a Hearing is not a Hearing: Irrebuttable Presumptions and Termination of Parental Rights Based on Status*, 44 U. PITT. L. REV. 879 (1983).

[8]Charles D. Kelso, *In Quest Of A Theory For Lawyering: Some Hypotheses And A Tribute To Dean Soia Mentschikoff*, 29 J. LEGAL EDUC. 159 (1975); Charles D. Kelso, *Teaching Teachers: A Reminiscence of the 1971 AALS Law Teachers Clinic and a Tribute to Harry W. Jones*, 24 J. LEGAL EDUC. 606, 613-27 (1972) (hereinafter *Teaching Teachers*).

I. PART I - RESEARCH DESIGN

Two aspects of the research design deserve further explanation. The first aspect is the connection between qualitative methods and the background of American law professors. The argument here is that qualitative methods, though seldom seen in legal literature, are nevertheless closely related to the strengths of a teacher in the common law tradition. The second aspect is how those methods are used in this study. Qualitative researchers have developed a number of tools. The second part of this section will explain how some of those tools are used here.

Initially, it appears easy to explain the absence in legal literature of qualitative research's extended descriptions. For many, those descriptions are just the tools of anthropologists seeking to capture exotic cultures. Perhaps they developed new research techniques to ensure the validity of their qualitative methods but the connection to legal education for some may have seemed elusive.

As the use of qualitative methods has spread beyond Pacific island research, the connection to legal education has become more obvious. The keys to progress are often concealed from us amidst the very familiarity of the research site. Likewise the very expertise of our teaching performance conceals the nature of what we do. The automated responses of an expert are not easily brought into consciousness for analysis.[9] Tools are needed to make the familiar strange and thereby help us to see with new eyes. Quantitative methods, especially inferential statistics, are powerful tools but they may not be the best for finding the storied purloined letter that sits right in front of us.

Nowhere is this more true than in a law school classroom. From kindergarten, we are familiar with the surroundings. But if a person had never seen a classroom, what would they see when first shown one? How would they describe the setting, the participants and the teaching in that classroom? Is it not probable the fresh perspective thus obtained would yield data for reflection that could lead to new insights?

This article undertakes to capture a fresh perspective for a familiar classroom setting. It borrows wholesale methods more commonly used in anthropology and related fields.[10] It records details that at first will appear unworthy of note. However, by the end it reveals a sharp, detailed picture which can lead to insights that snapshots can not elicit or support.

Although this methodology is seldom seen in the legal literature, the reader should find the approach comfortable due to the common law heritage shared by professors in America. Our legal training ingrains a deep respect for the facts of a situation. The facts interweave our analytical moves as we problem find

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[9] P. Johnston & P. Afflerbach, *The Process of Constructing Main Ideas from Text*, *in* 2 COGNITION & INSTRUCTION 207 (1985).

[10] *See* ROBERT C. BOGDAN & SARI KNOPP BIKLEN, QUALITATIVE RESEARCH FOR EDUCATION 1-26 (1982) (tracing the roots and development of qualitative methods in education).

and problem solve. Our descriptions of the process include phrases like "situation sense," "reasoned elaboration," and "reasoning by analogy."

However we describe our common law process, the fact remains we are skilled in the analysis of how similar cases are decided similarly, of how prior similar problems can guide future problem solving. Although we may not be conscious of the mental process being used,[11] we nevertheless can proceed even when no rule has yet developed, or when a variety of approaches vie for our attention. Qualitative research builds on our skills and the results can help law professors as well as other teachers by providing reports of prior similar situations and examples for guidance when no single rule determines the best teaching approach. Unlike the number crunching skills of quantitative methods, we are on familiar ground with qualitative research's emphasis on the facts, on relationships or patterns and on analysis using reflection.

In law, facts are preserved for analysis by transcripts of courtroom proceedings. In qualitative research on teaching, classroom transcripts[12] play a similar role together with fieldnotes[13] and personal narratives.[14] In the words of Mehan, the goal is to capture "careful descriptions of what takes place inside schools."[15] Although the field still is developing,[16] guidance in producing the "careful descriptions of what takes place inside schools," referred to by Mehan,[17] is available in the works of Geertz,[18] Mehan,[19] and Erickson,[20] among

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[11] Even putting aside the previously mentioned problem of automated responses of experts, Johnson & Afflerbach, *supra* note 9, law professors also disagree on what the nature of the process is. For example, the author's work focuses on legal reasoning as reasoning by analogy. Senger, *supra* note 6. This follows the work of E.H. Levi and D.A.D. Hunter. However, a review of any jurisprudence text will reveal a number of alternative approaches.

[12] HUGH MEHAN, LEARNING LESSONS: SOCIAL ORGANIZATION IN THE CLASSROOM 19 (1979).

[13] BOGDAN & BIKLEN, *supra* note 10, at 74-96. For the anthropological background of fieldnotes see FIELDNOTES (Roger Sanjek ed., 1990).

[14] Kathleen Casey, *The New Narrative Research in Education*, 21 REV. RES. EDUC. 211 (1995). *See also* JOHN A. CENTRA, REFLECTIVE FACULTY EVALUATION 94-114 (1993) (explaining research on self-reports as part of teaching portfolios).

[15] MEHAN, *supra* note 12, at 8.

[16] "Educational ethnography is neither an independent discipline nor, as yet, a well-defined field of investigation." MARGARET D. LECOMPTE & JUDITH PREISSLE, ETHNOGRAPHY AND QUALITATIVE DESIGN IN EDUCATIONAL RESEARCH 9 (1993).

[17] MEHAN, *supra* note 12, at 8.

[18] *See generally* CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES (1973).

[19] *See generally* MEHAN, *supra* note 12.

[20] Frederick Erickson, Qualitative Methods in Research on Teaching 6 (1985) (Occasional Paper No. 81, Michigan State University) (on file with the Institute for Research on Teaching, Michigan State University).

others.[21] Erickson's 1985 guidelines for qualitative research, "fieldwork," will be used in this article:

> Fieldwork research involves (a) intensive, long-term participation in a field setting; (b) careful recording of what happens in the setting by writing field notes and collecting other kinds of documentary evidence (e.g. memos, records, examples of student work, audiotapes, videotapes); (c) subsequent analytic reflection on the documentary record obtained in the field; and (d) reporting by means of detailed description using narrative vignettes and direct quotes from interviews, as well as by more general description in the form of analytic charts, summary tables, and descriptive statistics.[22]

In the study for this article, the first step in following these guidelines was to collect data in three ways. Every class for the semester was videotaped. Of the resulting twenty-eight class periods, thirteen and one-half were also transcribed.[23] Due to the acoustics of the room, the transcripts contain all of the professor's speech but only some of the students' responses. In order to preserve as much of the classroom communication setting as possible, the transcripts present exactly what was said without editing or revisions.

In addition to the videotapes and transcripts, data was collected in two other ways. First, the author took fieldnotes while attending all classes. Second, the author collected fieldnotes from individual student interviews, from an interview with a select group of students and from interviews with the professor.

Each type of data or evidence serves to enrich and check the others. Preliminary findings of the author are checked against comments of the

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[21] *See, e.g.*, BOGDAN & BIKLEN, *supra* note 13.

[22] Erickson, *supra* note 20, at 6. Some of Erickson's own work is microanalysis of interactions. *See, e.g.*, Frederick Erickson & Gerald Mohatt, *Cultural Organization of Participation Structures in Two Classrooms of Indian Students, in* DOING THE ETHNOGRAPHY OF SCHOOLING 132 (George Spindler ed., 1982). For further comparisons between participant observation and ethnographic microanalysis see Frederick Erickson, *Ethnographic Microanalysis of Interaction, in* THE HANDBOOK OF QUALITATIVE RESEARCH IN EDUCATION 201, 204-11 (D. LeCompte et al. eds., 1992).

[23] Selection of class periods for transcription was not random. The first class period of the first two classes (Jan. 3, 1994 and Jan. 5, 1994) were transcribed to document the described structure of the class. The other one and one-half classes in January (Jan. 26, 1994 - 1/2 class due to condition of videotape - and Jan. 31, 1994) were selected primarily to document the discussion of Bowers v. Hardwick, 478 U.S. 186 (1986), especially the absence of references to other legal authors. Both class periods on February 28, 1994 were transcribed to document a full review session. The rest of the transcripts provided roughly balanced coverage of the term: three and one-half periods total for January, four periods for February (not counting the two review periods), and four periods for March. Ms. Cheryl Scott prepared all the transcripts and thus helped assure consistency in the choices which are inevitable in a transcription process. In order to abstract the value that real dialogue plays in professor-student exchanges, the author has preserved the phoenetics of these dialogues.

students or the professor. Likewise memory of a scene is refreshed and checked for accuracy via the videotape.[24] The transcripts allow general findings to be rendered more specific. For example, word searches are utilized to affirm or cast doubt upon conclusions regarding the type of authorities being used by a professor. Word counts also quantify both speech rates and the usage of casual speech forms.

Beyond the double-check of collecting multiple sources of evidence, an additional test for the findings is review by the classroom participants. When a researcher selects and summarizes some aspects of the teaching, the challenge that can be raised is the researcher's findings are mistaken or unsupported opinions are being offered. To insure the reliability and validity of the research findings, the participants, the professor and some students, review the report and affirm the findings.[25]

The multiple types of data provide more detail to enhance peer reflection on this professor's teaching. Measurements and descriptions of the room, for example, help the reader form a mental picture of the scene. With that picture, readers can compare their probable teaching approaches in that setting, to the environment which was studied for this article. This reflection not only helps the reader, but in addition, serves to double-check that the findings to ensure accuracy.[26]

II. PART II - THE FINDINGS

A. The Setting and Participants

The setting for the study is Thomas M. Cooley Law School, a Midwestern law school of about 1600 students. At the time of this study (1994), over ninety percent of the students took ten credit hours in each of three fifteen-week terms per year. Constitutional Law II is a three credit-hour required course completing the six credit-hour block usually taken by students in their fourth and fifth terms. The classes meet for two fifty-minute periods in a two-hour

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[24] MEHAN, *supra* note 12, at 16.

[25] The findings have been reviewed by both the professor and by several students, both male and female. Several changes came from these reviews. The professor noted that his reference to another professor was not in regard to the use of the chalk board but referred instead to the doctrine involved. One student, Ms. Nancy Scott, noted that Pyro's command of the material was not highlighted enough even though it was a key to the respect accorded him by students. She also mentioned that Pyro, unlike some other professors, could handle a question about any part of the course and still keep the class focused on the current material. However, the balance of the description was generally affirmed by both the professor and the students. For an alternative approach to validity see Margaret A. Eisenhart & Kenneth R. Howe, *Validity in Educational Research, in* THE HANDBOOK OF QUALITATIVE RESEARCH IN EDUCATION 643 (Margaret D. LeCompte et al. eds., 1992).

[26] On the evaluation by a reader of the evidence presented see LECOMPTE & PREISSLE, *supra* note 16.

block (Monday from 8:00 a.m. to 10:00 a.m.) and a single fifty minute period on another day of the week (Wednesday from 9:00 a.m. to 9:50 a.m.).

The classroom has 168 seats with 125 students[27] sitting where they choose. Their academic profiles cover a wide range but many have LSAT scores and undergraduate grade point averages at the lower end of the law school spectrum. Only a few have grown up in the home of a lawyer. All students face a four foot high green chalk board[28] which stretches across the center thirty-two feet of the forty-six foot front wall of the room. An American flag anchors one end of the board on the professor's right, and a clock is high on the wall on the same side of the room. Beige carpeted floors and back wall, coupled with mercury vapor lights and a quiet ventilation system, assure that a videocamera in the top left room corner will record every word of a podium [29] speaker[30] a little over fifty feet away. Intervening are eight rows of seats and long tables on the descending steps of the tiered classroom. Aisles divide each row into three sections with the middle sections being the longest and the side sections are angled slightly toward the front of the room. The back rows are longer since the back wall of the room is about twenty feet wider than the front wall. Each student has a fairly limited writing area.[31] Due to this spacing, and the sparse number of electrical outlets, only one student uses a computer to take notes.

Both doors are at the front of the room. Sometime during the last five minutes before class, Professor Philip J. Prygoski ("Pyro") enters. A few inches shorter than average, Pyro is of average weight. His brown hair yields to round pattern balding in the back, his glasses are unobtrusive, and his attire usually includes a long sleeved shirt and tie but his apparel ranges from three button shirts to suits. The only hint of his considerable athletic ability is his easy gait as he walks into the room.[32]

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[27] Most of the students were assigned to this section and professor by the registrar. The gender breakdown of the class reflects that of the student body, roughly forty percent female. Ethnic minorities were also included in this study.

[28] The chalk board itself is forty-eight inches high. Not counted is an inch high cork strip, usually unused, which runs along the top of the board.

[29] The portable podium, 12.5 inches high nearest the speaker, sits on a desk which is 95 x 34 inches and 30.5 inches high at the base of the podium.

[30] Although most of the professor's words were captured, student comments and recitations were difficult to record reliably. For the first half of the term, the camera lens captured as much of the room as possible; for the second half, only the space in which the professor moved was recorded. As much as possible, only the backs of student heads were in the picture because written informed consent was obtained only from the professor. Informed consent is difficult to obtain from a group of law students for a number of reasons, in this instance, the author's position of power over the class.

[31] The seats are thirty-two inches from center to center but seats at the end of the rows have less. For example, there are six seats in a section fifteen feet long or an average of thirty inches per seat. Student tables are eighteen inches wide.

[32] Students respect these abilities due to their experience playing Pyro in both softball and basketball.

It may be helpful to reflect on the scene described thus far. Given this description, what type of teaching decisions would each of us make? The blackboard dominates the room like a giant Cyclops. The pie-shaped center section increases the number of students who are far from the aisles. There are no rear exits. If a students wish to leave, the diagonal aisles funnel them past the professor before they can reach one of the doors. There is no overhead projector. The front projection TV is out of order. Would these physical characteristics of the room change our teaching? Would we use more handouts? How would we use the blackboard? Would we work the diagonal aisles or stay at the podium? What about the typical student profile? If teaching is to make a difference, these students present a great opportunity. How might that opportunity be best pursued? The balance of this article reveals one set of answers to these questions. Throughout we can reflect on what our choices might have been and what differences such choices might make.

Once class begins, Pyro remains behind the podium or within one step to his right. The speaker's portable podium is centered on an almost eight-foot long desk. Whether he stands or half sits on the chair, the podium is at a convenient height for leaning. From a leaning position, most gestures are half-arm movements with the elbows anchored on the podium. Likewise, his gestures when standing are movements with just the lower half of the arm or arms. His arms are rarely fully extended. An exception occurred when he was talking about community standards in obscenity cases. He said: "One of the questions that everybody brings up is: *Wait a minute.* Doesn't this create some sort of equal protection problem or at least an equality problem?"[33] During the underlined words, he extended both arms up above his head, palms toward the students, in a typical "stop" gesture.[34] A similar exception occurred during the discussion of the march in Skokie, Illinois. Pyro stretched out both arms to indicate the size of the heckler crowd. Then he made a two armed "hold off" gesture to indicate the task of the few police officers controlling the hecklers.[35]

Weekly assigned readings range from under thirty pages to over one-hundred pages using both an assigned text and a supplement.[36] Both the average and the median are a bit over twenty pages per class period.[37] During the term there are few additional hand outs, usually to address an area that has given students difficulty on prior exams. For example, one handout explained the levels of scrutiny applicable in alienage cases. It revealed both strict and low-level scrutiny were applied by courts but never intermediate scrutiny. Pyro

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[33]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 14, 1994) (on file with Charles J. Senger).

[34]*Id.*

[35]*Id.*

[36]The text used was WILLIAM B. LOCKHART ET AL., CONSTITUTIONAL LAW (7th ed. 1991 & Supp. 1993).

[37]Average is twenty pages; median is twenty-two pages. In general, class recitations cover only the cases themselves according to the structure laid out by Pyro.

told the class prior students often remembered the level of scrutiny changed but they would forget that it went all the way down from strict to low-level scrutiny.[38]

Use of the chalkboard is rare. A few times during the term, Pyro puts a few words on the board directly behind the lectern, unless other space had to be used because of prior writing by Pyro.[39] On two occasions, Pyro's own words acknowledged that his use of the board was an exception. In one instance he said "I hate to do this to you" and then wrote the letters FRSEP [Fundamental Rights Strand of Equal Protection] on the board.[40] On another occasion, he said "I hate to look like _____ _____" [another professor who uses the board extensively] and then put on the board a grid illustrating when substantive due process is used.[41] Other examples include: a diagram consisting of a line with "obscene" on the bottom and a category of protected speech on the top;[42] a diagram for the trimester time line for *Roe v. Wade*;[43] a parallel time line for the *Cruzan v. Director, Mo. Dep't of Health*;[44] a line with societal discrimination at one end and individual civil rights violations at the other in the context of the *Richmond v. J.A. Croson*;[45] a table summarizing the public forum speech cases which was used during the final review class;[46] and a few case citations given to supplement class materials.[47] This limited use of the chalkboard, plus the fixed position behind the podium, means that Pyro has easy eye contact with the students at all times.

Eye contact is enhanced because students can see that Pyro is not working from a set of notes or prepared questions. All he has on the podium is a copy of the text, just like the students,' with a few annotations in the margins. As Pyro said, he likes to be free to follow the flow of the particular group of

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[38]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 14, 1994) (on file with Charles J. Senger).

[39]*Id.*

[40]Fieldnotes from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 10, 1994) (on file with Charles J. Senger).

[41]Fieldnotes from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 17, 1994) (on file with Charles J. Senger). In a meeting with Pyro, he said that his comment did not refer to the use of the board, but rather, the doctrine involved. Interview with Philip J. Prygoski, Professor of Law, in Lansing, Mich. (Apr. 4, 1996).

[42]Fieldnotes from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 7, 1994) (on file with Charles J. Senger).

[43]Roe v. Wade, 410 U.S. 113 (1973).

[44]Cruzan v. Director, Mo. Dep't of Health, 497 U.S. 261 (1990).

[45]Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

[46]*Id.*

[47]*Id.*

students in front of him. In his opinion, notes get in the way of staying with the students.[48]

B. Supportive, Informal Classroom

Two findings dominate evidence taken from classroom notes, videotapes, and classroom transcripts. First, the use of supportive verbal and nonverbal communications, employing word choices with a combination of words of art and slang. Second, a predictable, focused structure in which such communication takes place. Additional findings come primarily from talking with students. The students noted additional factors such as a sense of humor, better than average grades, and the level of caring and trust nourished by this class.

The supportive, informal[49] atmosphere of this classroom is set early as Pyro stands at the front of the room before class starts. Centered behind the shoulder-width, desktop podium, he greets a number of the entering students by name since they had been in his Constitutional Law I course.[50] Seemingly casual banter and smiling comments allow Pyro to take the pulse of the class during the final minutes before starting. After Pyro starts the class, he neither welcomes late arriving students nor does he reprimand them. One student walked in with one minute left in the period and Pyro remarked "It will be a good last minute."[51] Even in the situation where the first student called upon was not present and then walked in while volunteers were starting to cover the case, Pyro joked about the situation and covered some class scheduling details in order to give the person time to sit down, open a book, and get ready to recite.[52]

Pyro's word choices reinforce the supportive, informal atmosphere. Slang terms and casual word forms mix with precise legal concepts. "Unenumerated liberty interest" is followed, five words later, by "scumbag screwin' around with

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[48] This comment was made to Professor Mark Kende who later repeated it to the author. Interview with Mark Kende, in Lansing, Mich. (Mar. 7, 1994). The remark was confirmed with Professor Prygoski in a conversation on April 4, 1996. He added that he had tried to use notes early in his teaching career and that it did not work for him. Interview with Philip J. Prygoski, Professor of Law, in Lansing, Mich. (Apr. 4, 1996).

[49] Although word choice is a key feature of this classroom, this article does not include formal, sociolinguisitic analysis. Thus, "supportive" and "informal" here are meant in their popular sense. Analysis in terms of "register," "code-switching," etc. is beyond the scope of this article. *See generally* R.A. HUDSON, SOCIOLINGUISTICS (1980). For an example of the explanatory power of such analysis see Charles A. Ferguson, *Sports Announcer Talk: Syntactic Aspects of Register Variation*, 12 LANGUAGE IN SOC'Y. 153 (1983). For a more general overview of teaching as a linguisitic process see Judith L. Green, *Research on Teaching as a Linguistic Process: A State of the Art*, 10 REV. RES. EDUC. 151 (1983).

[50] Transcript from Philip Prygoski's Constitutional Law II class at Thomas M. Cooley Law Schol (Feb. 2, 1994) (on file with Charles J. Senger).

[51] *Id.*

[52] *Id.*

another guy's wife."[53] "Hell,"[54] "damn,"[55] "zillion(s),"[56] etc. weave in without missing a beat. More generally, gerunds typically lose the final "g"s and "talking" becomes "talkin."[57] Likewise contractions abound and "it's,"[58] "gonna"[59] and "that's"[60] are the second, fourth,[61] and fifth most common words in the transcripts.

Pyro often acknowledges a student's raised hand by looking at the person and saying "Yeah."[62] "Yeah" also often begins his answer.[63] In addition to using the word "Yeah," Pyro includes in his answer words such as: "Right;"[64] " Real good;"[65] "good answer;"[66] and "excellent answer."[67] Although the words vary, the net effect is that a supportive verbal response is made to a student almost

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[53] Transcript from Philip Prygoski's Constitutional Law II class at Thomas M. Cooley Law Schol (Jan. 26, 1994) (on file with Charles J. Senger).

[54] Appearing forty-one times in the transcripts for thirteen and one half class periods. Transcript from Philip Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger). All word frequency counts were performed by the use of a computer program, provided by Zylab, Arlington Heights, IL.

[55] Appearing twenty-four times in the transcripts. *Id.*

[56] Appearing five times in the transcripts. *Id.*

[57] *Id.*

[58] Appearing 593 times in the transcripts. *Id.*

[59] Appearing 433 times in the transcripts. Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

[60] Appearing 397 times in the transcripts. *Id.*

[61] The third most common word is "court" 436 times. *Id.* The most common word is "right." Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

[62] Appearing sixty-seven times in the transcripts. Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

[63] Appearing fifty-six times in the transcripts. *Id.*

[64] "Right" is the most common word in the transcripts with 822 appearances. *Id.* The most common use of the word is in reference to a constitutional law right. *Id.* (referring to 363 times). "Right?" is used 316 times during Pyro's speech segments as a rhetorical question. *Id.* It occurs seventy-nine times it occurs in various other expressions such as: "right off the bat;" "right in the middle;" "right side of the page;" "right direction;" and "right mind." *Id.*

[65] Appearing five times. *Id.*

[66] Appearing three times. *Id.*

[67] Appearing one time. Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

ten times per fifty minute class period. In addition, Pyro usually gives further encouragement by nodding in agreement during student recitations.[68]

Pyro's strong commitment to support is demonstrated when a student gave an incorrect answer: "Great, wrong answer. Perfect. Thank you for giving that wrong answer."[69] Even when Pyro is upset with a student, his voice and manner stay within his normal way of speaking. For example, Pyro started one class commenting that he had to come to work forty-five minutes early due to the icy weather. He said it was not a great way to start the day.[70] If he had not said something, there would have been no indication in his voice or actions that he was not in a good mood. Then, about ten minutes into the second class period, he became, according to his own after-class description, "pissed" at two students in the front section on the author's side of the room.

Pyro had glanced at the pair a few times during his presentation. Then this exchange took place:

Pyro:	Both sides were gonna appeal. What's that tell you? What's the basis of the appeal? (Points at one of the two students - not a volunteer or on the hit list - and walks over in front of them.) What do you think? Umm, what's the basis of the appeal?
Student:	The basis of the appeal?
Pyro:	Yeah.
Student:	That the right to appeal the charges . . . .
Pyro:	What? Whose right? (Walks back to the podium.)
Student:	The right.
Pyro:	Whose right.
Student:	The right of the girl to appeal.
Pyro:	And it wasn't protected? Why?
Student:	Ahh, I'm not sure.
Pyro:	Why wasn't the right being protected? (Calls on someone on the other side of the room.)[71]

Pyro's sojourn away from the podium lasted less than twenty seconds. His tone remained the same as it had been throughout the class. However, it was clear he had broken the routine by moving from the podium and calling on an unexpected person. During this exchange, three students in front of me traded

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[68] *Id.*

[69] Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

[70] *Id.*

[71] *Id.* Only this portion of the videotape was transcribed.

glances and quick whispers. It appeared they had also gotten the message. Similar glances were exchanged across the room.[72]

Besides the preceding incident, some other exceptions to the usually supportive atmosphere were noted. During the first class period, this exchange took place:

Pyro: Please, somebody. C'mon, this is basic stuff. You learned this in Crim Pro.

Student: Could you say that the Fourteenth Amendment states that the Bill of Rights or the Constitution applies to the state, ah, applicable to the states?

Pyro: Fourteenth Amendment says that? Where does the Fourteenth Amendment say that?

Student: Says that the states can't abridge your rights without due process.

Pyro: Can't abridge your rights without due process. It says that?

Student: It says something close to that.

Pyro: It says something close to that. Something close to that isn't good enough, okay? I know that this is not calculus or something, but neither is it impressionistic art from the Eighteenth century, right?

Student: No state shall make or enforce any law which abridges the privileges or immunities of any citizen.

Pyro: No state shall make or enforce any law which abridges the privileges or immunities of any citizen. Completely forget that. That's wrong. Absolutely, flat out, nobody in his or her right mind cites the privileges or immunities clause of the Fourteenth Amendment. It is dead letter, got it? It is approximately 0 for 120 years now. Twenty-one years, '94. What part of the Fourteenth Amendment gets the Fourth applicable to the states? It's not the privileges or immunities clause.[73]

This example is representative of the exceptions. Pyro was supportive in most situations, but if a student said something likely to mislead others, Pyro would underline how the statement was wrong. This was especially likely to happen in the context of student questions. Examples of Pyro's responses in

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[72]In discussing a draft of this article, Pyro said something that may pertain to this incident. He mentioned that early in a term, he deliberately calls on a class bully and forces a successful question and answer sequence. He said that this is an application of basic "playground" logic. If you get that student on your side, the bully's side-kicks fall into line. Other students then may feel more free to participate. Interview with Philip J. Prygoski, Professor of Law, in Lansing, Mich. (Apr. 10, 1996).

[73]Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 14, 1994) (on file with Charles J. Senger).

these situations are: "No, the question is wrong;"[74] "No, no, those rules apply to both scenarios;"[75] "I don't think so;"[76] "No, that's a whole different case;"[77] "Well, that was the next thing I was gonna talk about. No on that one."[78]

If Pyro makes a mistake, he is quick to correct it and to apologize. For example, once a student asked about a newspaper report of a lesbian seeking to adopt a child. Pyro summarized the facts of a case, but in the process, mixed facts from another case and said: "One got really weird."[79] The class broke up in laughter. Pyro immediately made clear that he was referring to the unusual fact pattern, not to individuals or their conduct. At the end of a five minute discussion, he again apologized and said: "Any other questions that I will try valiantly not to put my foot in my mouth?"[80]

Whether supporting or correcting a student, Pyro's rate of speech is consistent with a supportive, informal atmosphere. His speech rate is about 148 words per minute.[81] However, when explaining important concepts, his speed drops as low as seventy-two words per minute to emphasize a few phrases. An example is when he explains rationality review for the first time. When he says, "At rationality. At rationality review, the end has to be legitimate," the words stretch over 9.15 seconds or seventy-two words per minute. This passage is part of a 232 word paragraph that is spoken in one minute, thirty-eight seconds or about 142 words per minute overall.[82] The excerpt shows that Pyro uses repetition and speech rate in a way that makes both understanding and note taking easy.

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[74] Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger).

[75] *Id.*

[76] Transcript from Philip J. Prygoski's Constitutional Law II class at Thoms M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger).

[77] *Id.*

[78] *Id.*

[79] Fieldnotes and videotape from Thomas M. Cooley Law School (Feb. 9, 1994) (on file with Charles J. Senger).

[80] *Id.*

[81] The average taken from four class periods (Feb. 14, 1994, Feb. 21, 1994, Mar. 14, 1994 & Mar. 21, 1994) is 148.58. This figure is rounded down to 148 to compensate for subtracting the number to times that Pyro's first name appears. The word count comes from Microsoft Word 6.0's word count function. Since Pyro's first name appears at the start of each of his talking segments, and he averages forty segments per class period, this could otherwise inflate the total of words being counted as being spoken by about 160 (40 x 4). For comparison, "[t]he most heavily coached speakers - presidents and presidential candidates - generally speak between 150 and 170 words per minute." JEFF S. COOK, THE ELEMENTS OF SPEECHWRITING AND PUBLIC SPEAKING 168 (1989).

[82] Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

C. Course and Recitation Structure

The classroom atmosphere flows from the predictable, focused structure of interactions with the students. Pyro insures that students know what to expect; whether it be the course itself, the way class will be conducted, the way recitations will proceed, or the elements of the examination.

Early in his introductory remarks, Pyro divides the three credit Constitutional Law II course into parts. An extended quotation presents both an overview of the course and an additional example of the type of speech used by Pyro in the classroom:

> Okay, what's gonna happen in here is that the course is gonna break down into four major areas. Sorta four and a half but I'll skip the contracts clause. What we're gonna start out with today basically will be substantive due process. Substantive due process. And primarily we're gonna be talkin about the Fourteenth Amendment to the Constitution and how the Fourteenth Amendment limits the ability of states and the federal government to restrict our rights or liberties. Within that chunk of the course, within the first quarter of the course, the main focus is gonna be on the right of privacy. Of course, there's no place in the Constitution but it's in there someplace, believe me. So the first chunk is gonna be substantive due process, primarily the right of privacy. The second quarter of the course will be equal protection. And there we're not talkin' about rights, we're talkin' about classifications when the equal protection clause of the Fourteenth Amendment prohibits the government from discriminating based on certain characteristics, such as race, gender, illegitimacy, alienage, that kind of stuff. The substantive due process, then equal protection, then we're halfway done, and by the way, I'm gonna do a review of that chunk of the course halfway through and that'll be the review. Then we move into the First Amendment area. The third quarter of the course will be free speech, and the fourth quarter of the course will be freedom of religion, both clauses of the Constitution, the establishment clause and the free exercise clause. So, for the most part, all of the individual rights and liberties stuff out of the Constitution.[83]

Question sequences develop the cases but Pyro repeatedly gives guidance as to what is expected. For example, in each of the first two classes, Pyro explains the structure underlying presentation of the cases. In the first hour of the first class Pyro states:

> Now the game is two-fold. The game in Con Law II is, first of all, to identify the right that's being abridged . . . . You have to identify the right and place it in the Constitution. That's the first thing you have to do . . . . The second step is to figure out how important the right is.

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[83]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 3, 1994) (on file with Charles J. Senger).

> Figure out how important it is and set what is called the level of scrutiny that the courts can use. Figure out how important the right is, you set the level of scrutiny. So, number one, you identify the right and place it in the Constitution. Number two, you tell me, or you tell the court someday, how important the right is, which in turn automatically sets the level of scrutiny that the court's gonna use.[84]

In the second class he states:

> Remember the game if you're attacking the law, if you're the plaintiff. You have to tell me, or a judge someday, you have to tell me in lay persons' terms, what the interest is that's being abridged. I can't pursue an occupation. Then you have to place that in the constitution. In other words, then you say, look, this is an aspect of liberty, due process laws. My liberty's being abridged.[85]

Another example from the second class occurs when Pyro states:

> The next step is how important is the liberty interest. You identify it, place it and weight it . . . give it some importance. If it's a fundamental right, for instance, that's being abridged, then we're at the level of strict scrutiny.[86]

In the first class, Pyro also gives further guidance on what he means by saying "you have to tell me in lay persons' terms."[87] He says "talk to me like a cabdriver."[88] He explains that students should state the basics of what is happening before "fancying it up."[89] The earlier quotations are examples of this process. In addition, Pyro uses a variant of the sequence to reinforce ideas during his presentations. While discussing the legal implications of a situation, Pyro will switch briefly back to the cabdriver's view. For example, when explaining the relationship between the Fifth and Fourteenth Amendments, he interrupted himself: "What I'm sayin" in English is . . ."[90] Shortly afterwards he was discussing the degree of an impairment and said: "How bad are you

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[84] *Id.*

[85] Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

[86] *Id.*

[87] Fieldnotes and videotape from Thomas M. Cooley Law School (Jan. 3, 1994) (on file with Charles J. Senger).

[88] *Id.*

[89] *Id.*

[90] Fieldnotes and videotape from Thomas M. Cooley Law School (Jan. 10, 1994) (on file with Charles J. Senger). Similar expressions appear four times in the transcripts, twice as statements and twice as questions requesting the students to explain what they were saying "in English." Transcripts from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 14, 1994, Feb. 23, 1994 (twice), & Feb. 28, 1994) (on file with Charles J. Senger).

being screwed?"[91] After presenting the analysis, he may say: "Does that strike your constitutional tummy as maybe a little weird?"[92]

Pyro gives similar overviews for each of the four major parts of the course. Review classes reinforce what has been presented. Throughout, Pyro assures students they all will know what they need to know by the end of the course. For example, at the midpoint review, Pyro says:

> As far as I'm concerned, the main problem that people have on, with exam writing here is talkin' about the facts. That is the problem because, when you get through with this course, if you don't know the rules of law, you've got somethin' wrong with you. If you don't know what the level of review is for a race-based affirmative program, you've got a couple of screws loose and you oughta be in dental school someplace. You know where people screw up? It's reading the facts and talkin' about 'em.[93]

For the first session of the term, only student volunteers recite. The volunteers are chosen at the beginning of class so that everything is set before the class begins. For the classes up until March 7, 1994, class sessions start with a "hit list": a list of four or five students to be called on for named cases, sometimes with a comment focusing the prospective discussion of a case. For classes lasting only one period, all the "hit list" students would not recite and those who did not would have advance notice for the next class. Starting on March 7, 1994,[94] Pyro calls on volunteers for questions throughout his lectures.[95] For the two review sessions, class recitation is extremely limited due to a straight lecture format.[96] In all situations, Pyro's questions focus on the assigned cases, not on the notes and other material in the textbook.[97]

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[91]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 10, 1994) (on file with Charles J. Senger).

[92]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

[93]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 28, 1994) (on file with Charles J. Senger).

[94]On February 21, 1994, Pyro told the class he had lost his master list so students might be put on the hit list even if they had recited before. Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 21, 1994) (on file with Charles J. Senger). On March 7, 1994, he said there would be no hit list for a few days to catch-up. Fieldnotes and videotape from Thomas M. Cooley Law School (Mar. 7, 1994) (on file with Charles J. Senger). No hit list was used for the balance of the term.

[95]*See generally* fieldnotes and videotapes from Philip J. Pygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

[96]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 28, 1994) (on file with Charles J. Senger). *See also* fieldnotes from Thomas M. Cooley Law School (Mar. 4, 1994 & Mar. 6, 1994) (on file with Charles J. Senger).

"Hit list" student recitations predominantly start with a traditional request for an overview: "Ms. ___, tell us about *Nebbia*,[98] please"[99]; "Okay, on page 359, we have *Duke Power v. Carolina Envtl. Study Group*.[100] Mr. ___, where are you? Can you tell us some of the facts here?"[101] The first time he does this during the term, he says: "Ah, John, what's *Calder*[102] about? Nobody really cares, but I'm supposed to ask you that so what's *Calder* about?"[103] After the student answered with reference to two justices who have different theories in the case, Pyro follows up: "What was the dispute in the case, just sorta for the record?"[104] The balance of the recitation follows the structure Pyro already has explained; after describing the situation, the constitutional interest is identified, weighed, and the level of scrutiny is thus determined and applied.[105] Thus, students know what is coming next.

A few recitations begin with a focused question: "Let's talk about *Ambach v. Norwick*.[106] First of all, what is alienage?" Give me the argument. You want to challenge the law. What do you say? What are you complaining about?"[107] "Why is it just a low level rationality review liberty interest in terms of cops being able to have the kind of haircuts they have to have?"[108] A focused question typically signals that discussion of the case will last for approximately five to ten minutes.

Occasionally, this recitation structure was modified to reinforce what had been taught in the prior course. The following is a typical example that gives a look at how Pyro's questions are sequenced, and how he adds extensive commentary to student answers:

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[97] *See generaly* LOCKHART ET AL., *supra* note 36.

[98] Nebbia v. New York, 291 U.S. 502 (1934).

[99] Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

[100] Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59 (1978).

[101] Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

[102] Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798).

[103] Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 3, 1994) (on file with Charles J. Senger).

[104] *Id.*

[105] *Id.* Pyro often would supply some of the steps while introducing the case. This would allow him to use more time exploring the remaining steps. Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 31, 1994, Feb. 14, 1994, & Feb. 23, 1994) (on file with Charles J. Senger).

[106] Ambach v. Norwick, 441 U.S. 68 (1979).

[107] Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 5, 1994) (on file with Charles J. Senger).

[108] *Id.*

Pyro: Ms. _____, tell us about *Nebbia* please.

Ms.: [Recites the facts of the case.]

Pyro: Okay, they're selling it for less than it had cost the farmers to produce it. The Court upholds this law, right?

Ms.: Right.

Pyro: What level of review does the court use?

Ms.: It seems to be rationality . . . well, ...

Pyro: Right, keep going.

Ms.: Okay, what they said was that as long as the law is not unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the options sought to be attained.

Pyro: Okay, you're talking about 354, first full paragraph on that. The Court said, look, as long as the law is not unreasonable, arbitrary or capricious. That's rationality talk. The law has to make sense at some level and that's it. I think you were hedging a little bit here, giving me a funny look here, on the means, I think, right?

Ms.: Yes.

Pyro: How come?

Ms.: Because it seems, it seems they went a little bit further than just rationality.

Pyro: Why do you say that? You're absolutely right. Why do you say that?

Ms.: Umm, because they spent a lot of time talking about, umm, how, how this the community needed to know, and how the farmers were going to be harmed, and we needed a structure of the milk prices rather than just saying it was too [inaudible word] right now.

Pyro: Okay, you're right, you're absolutely right. And substantial, by the way, is a buzz word that implies intermediate scrutiny, implies somethin' more than just rationality. At rationality, the Court's real deferential, right? So, hey, you guys want to do this? Okay with us. Intermediate scrutiny, the Court is gonna take a closer look at what the legislature does. Substantial is the buzz word for intermediate scrutiny, this does look like somethin' more than rationality. At least at some points in the opinion. Why do you think that is?

Ms.: Umm, well, it's 1933. Before that it seemed that the Court was going to let the marketplace control. We're not going to get involved in contracts or food prices, they can sell at whatever price they want to sell.

Pyro: Okay, exactly right. The case comes down in '34. What's going on in 1934? Think back, I hate to ask you to do this.

Think back to Con Law I, right? What's goin' on about now? Switch in time that save nine. *Darby* and all those cases where the Court changes gears in the commerce clause area. And what was the deal before 1937 or so with Congress? Con Law I. Close the deal, right? They couldn't regulate, could not regulate a whole bunch of stuff under the commerce clause because it wasn't in interstate commerce. The Court was not that deferential. What happened right around 1935 or 1937 in the commerce clause area? The Court starts to say, hey, you guys want to do this? Everything's in interstate commerce. Concomitantly, when a state starts to regulate right about now, 1934, to pull the country out of the depression, the Court is more willing to allow 'em to do this. You can't ignore the historical and political and social factors. But from this point on, from *Nebbia* on, the Court is much more willing to allow a state to regulate in the economic area and it ties in directly with those commerce clause cases from Con Law I. What do you have, after about 1940? With states and the federal government, with both of them, you have the courts backing off. Right? Did the Court have any sort of very, any sort of intrusive role in the commerce clause area after 1940? Heck no. What was the question? Is this stuff in commerce? Absolutely yes. Okay, Congress can regulate. What's the deal here? The state wants to do this, they can regulate.

Now in terms of the, what you identify it is, is perhaps the confusion or the mixing of levels of scrutiny. This is the transition case. That's all that's goin' on. This is the transition case and they're going from states cannot regulate this to states can regulate this. They're still looking for a standard.

Let me ask you somethin' about page 355, first full paragraph, about halfway through. The Court says that the laws passed are seen to have a reasonable relation to a proper legislative purpose. Stop there. You're the state. What's your proper legislative purpose?

Ms.: Assuring safe food supplies. [This response is partially inaudible. The student also may have mentioned the police power.]

Pyro: Yeah, exactly. Look, if it's a state. One more time, okay. You gotta say Tenth Amendment, police power, health, welfare, morals. Then specifically, factually, describe what the state interest is. In other words, make the baby argument, right? But, specifically, factually, describe the interest. What I'm sayin" to you is, don't just say: "Oh, this is a Tenth Amendment interest of the state." It has to be, what else is it. Now everybody says that. They say police power. Oooohhh, boy, now you're really smart,

> right? No, everybody says that. Health, safety, welfare, and morals. Now you're gettin' a little smarter, but not much. You gotta tell me factually what the state is arguing. Why is it passing this law? You have to be as specific as possible about the interest being asserted by the state. It's also true when you describe an individual's interest that is allegedly abridged by government. You gotta be specific about: Is this parenthood that is being abridged? Is it the right of illegitimate fathers that is being abridged? Specifically, what is it? Ummmm. So, in this case, the Court changes gears a little bit and the control that the Court is going to assert over states declines. They're not gonna take as intrusive a role in the socio-economic area. (Student name), what do I mean when I say: In a socio-economic area?[109]

This exchange with the student continued with an explanation of social and economic interest analysis, a discussion of *Carolene Prods.*,[110] and a recap of rationality review analysis.

Often Pyro's comments explain how the case fits within the judicial philosophy of the individual justices sitting on the case. For example, Pyro repeatedly praises Justice Scalia's ability to frame an issue so as to insure the desired outcome:

> There's a great argument that you ought to pay attention to in *Smith*[111] between Scalia[112] and the majority and Brennan and the dissent on levels of abstraction and how you argue it. Scalia says that Oregon has an overriding compelling interest in the war on drugs. Well, you put it that way, peyote guys lose, right? How can you say: "War on drugs, it's not a compelling interest?" Brennan says: "Wait, look at the facts." Over the last ten years or something, you know how much peyote was confiscated? Fifteen pounds. There are like 2,900,000 pounds of marijuana or something. And apparently, I've never done this, but if you ingest peyote, you get sick as a dog, throw up for about three days and feel horrible. They said, Brennan said: "Have you ever seen

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[109] *Id.* This example is taken from an early class so as to be consistent with the structure already described in the previous quotations from the first two classes.

[110] United States v. Carolene Prods. Co., 304 U.S. 144 (1938).

[111] Employment Div. Dep't Human Serv. v. Smith, 494 U.S. 872 (1990).

[112] Justice Scalia's name appears eighty-seven times in the transcripts. Justice Brennan's name is second most common appearing forty-seven times. The names of other justices appear less frequently but this may be due, in part, to the particular cases being studied. However, similar word searches show that the names of scholars are not mentioned in the transcribed discussions. For example, there are no mentions of: Dworkin, Fuller, Hart, Perry, Posner, Raz or Tribe. Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

> anybody on the street corner hawking peyote?" You buy this? It has nothing to do with the war on drugs. Well, as soon as you say "War on drugs," the game's over. Forget it, right? But as soon as Brennan says, "Ritual use of peyote, look at who's doing this." As a matter of fact, peyote reduces alcoholism among the native American population (two unintelligible words). It's a real interesting argument in terms of rhetoric. Any other questions about this stuff? Okay, let's go to page . . . .[113]

If a student is unable to respond to a question, Pyro immediately moves to a volunteer student to help. Even when the student called upon was not present, Pyro only said: "No, not here. Always nice. Ummm, anybody else want to talk to me about this case?"[114] On one occasion, Pyro chided the class for not responding but that was in the context of a question directed at the whole class: "C'mon, talk to me about this. If we had to go get eighty-five people off the street, they'd be screamin' and yellin'. You guys are sitting here lookin' at me like what the hell's going on."[115]

Whether using a hit list or volunteers, Pyro's talking segments per class number about forty.[116] These forty or so segments typically cover eighty to ninety percent of the class periods. Analysis of the amount of total class time consumed by student answers shows that they often are only one or two sentences long.

Stories weave their way into the commentaries in five of the twenty-eight class periods. One was about Justice Powell's change of mind about his vote in the *Bowers v. Hardwick*[117] case.[118] Another concerned a prior student, an expert in canon law, who had explained seven views of natural law and why it could not provide sure answers to many constitutional law questions.[119] Another was

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[113]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 21, 1994) (on file with Charles J. Senger). Pyro also described Scalia as "flat out brilliant" in defining an interest for purposes of argument. Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 21, 1994) (on file with Charles J. Senger).

[114]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 31, 1994) (on file with Charles J. Senger).

[115]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 14, 1994) (on file with Charles J. Senger).

[116]Bakhtin uses the word "utterance" to refer to speech segments bounded by a change of speaking subjects. *See generally* M.M. BAKHTIN, SPEECH GENRES AND OTHER LATE ESSAYS 71 (Caryl Emerson & Michael Holquist eds. & Vern W. McGee trans., Univ. of Texas Press 1986). "Segment" here shares Bakhtin's definition.

[117]Bowers v. Hardwick, 478 U.S. 186 (1986).

[118]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 31, 1994) (on file with Charles J. Senger).

[119]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 3, 1994) (on file with Charles J. Senger). This story also allowed Pyro to share with the class, that although he was sure that the student was "absolutely

about racial "steering" by real estate agents.[120] Another was about the implications of a vulgar slogan on a basketball shirt when the slogan was in Russian,[121] and finally, one was about Pyro's participation in one of the First Amendment cases.[122] Each story presented otherwise unavailable information relevant to the case being discussed. In one instance, Pyro showed a video tape outside of class to give greater detail about the *Cruzan*[123] case.[124]

Outside of the assigned cases, two types of topics regularly appear in the commentaries: current events and bar examination references. For example, the work of Dr. Jack Kervorkian is mentioned six times in the transcripts.[125] Likewise the "bar exam" is mentioned eight times in the transcripts,[126] "multistate" sixteen times,[127] and "test" (in this sense) eight times.[128]

If time permits,[129] Pyro will accept questions during his comments. If a question goes beyond the scope of the discussion, Pyro reigns it in, often with a self-deprecatory comment: "Contract consideration and all that stuff - you're starting to hurt my head."[130] "I'm not smart enough for that."[131] "Time out. You're ahead of me. Just how does this program work."[132] If the student comment repeats what has already been said, Pyro may refer to the prior

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right," "[n]obody in the class understood a word he said, including me." *Id.*

[120]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 14, 1994) (on file with Charles J. Senger).

[121]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 2, 1994) (on file with Charles J. Senger).

[122]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 21, 1994) (on file with Charles J. Senger).

[123]Cruzan v. Director, Mo. Dep't. of Health, 497 U.S. 261 (1990).

[124]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Mar. 21, 1994) (on file with Charles J. Senger).

[125]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

[126]*Id.*

[127]*Id.*

[128]*Id.*

[129]Several times Pyro ignored raised hands when it appeared that he was short of time. *See, e.g.*, fieldnotes and videotapes from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 9, 1994) (on file with Charles J. Senger).

[130]Fieldnotes from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 10, 1994) (on file with Charles J. Senger).

[131]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 3, 1994) (on file with Charles J. Senger).

[132]Transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 21, 1994) (on file with Charles J. Senger).

student's comment by name and thus link the two comments without extensive retracing of steps.[133]

D. Findings from Student Comments

When the class was discussed with a group of students,[134] three other findings emerge. Over and over, students refer to Pyro's "sense of humor" and "trust."[135] In addition, a few students who had taken a prior class with Pyro referred to his giving better than average grades.[136]

When students referred to "sense of humor," they might nonetheless have difficulty providing examples of what they meant.[137] One person said it was Pyro's "friendly, joking class attitude."[138] Another liked Pyro's way of referring to some things, such as when Pyro said "He didn't get anal about labels."[139] Another recalled the story about a Russian saying on a shirt because that involved a joke on Pyro.[140] Another recalled the time a student had said that a

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[133] *See, e.g.*, transcript from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Jan. 26, 1994) (on file with Charles J. Senger) (Pyro stated "Yeah, exactly, exactly right. You're sayin the same thing that [student's name] just said."). *Id.*

[134] Fieldnotes from meeting with students at Thomas M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger). This meeting took place after class on February 23, 1994. Five students volunteered to discuss the class. A videotape of the just concluded class was used to facilitate the discussion. After showing about twenty minutes of the tape, during which the students made some comments, the discussion became more general and no more of the tape was shown.

No women or minorities volunteered for this session. A better research design would have anticipated this possibility and provided for non-disruptive alternative ways, at least, to gather other focus groups. Although both female and male students have reviewed and approved these findings; and although the findings are consistent with the other evidence that was gathered, the findings still must be read in light of the resulting limitations on the initial input.

[135] *Id.*

[136] *Id.*

[137] One possible explanation comes from a personal communication with Fred Trost, a student in one of Pyro's classes. Interview with Fred Trost, student at Thomas M. Colley School of Law, in Lansing, Mich. (Mar. 21, 1996). Mr. Trost noted difficulty in writing down some of Pyro's funniest lines because they always came right before important points that were worthy of note taking. Since he did not have time to write both, he was not able to write down the funny lines. *Id.*

[138] Fieldnotes from meeting with students at Thomas M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger).

[139] During one class, Pyro said: "If I get real anal about the labels . . . . I don't go nuts about the labels." Fieldnotes from Philip J. Prygoski's Constitutional Law II class at Thomas M. Cooley Law School (Feb. 9, 1994) (on file with Charles J. Senger).

[140] Fieldnotes from meeting with students at Thomas M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger).

rule "sucks real bad" and Pyro interjected "to use the technical term."[141] Another noted Pyro could use labels like "Commie Pinko" to keep a discussion from becoming too serious or personal.[142] Amongst students who had Pyro for a prior course, one exception came out. Several of them mentioned they had wondered who had written the examination because "it was so formal" and "there were no jokes."[143] This led to a discussion of grades. The students noted that Pyro's grades were higher than average. In part, they attributed this to superior teaching, especially in contrast to some other professors whom they named.[144]

Students found it easier to give examples of why they referred to "trust" as a key concept. One student said "there are no surprises."[145] Another noted: "He tells us to write it down, that it will make sense later, and it does."[146] Several students said that "he didn't hide the ball - that he would say it in English and they could get the jargon later."[147] One said that you did not need to know Latin to follow what he was saying.[148] Several students noted that both Pyro's speech and his demeanor demonstrated his regard for his students.[149]

A couple of the students raised one negative comment.[150] They felt it was unfair to the class to have students walking in late without a reprimand.[151] This led to contrasts with the practices of other professors.[152]

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[141] *Id.*

[142] *Id.*

[143] *Id.* In a conversation with two students, Ms. Ellen Bezian and Mr. Fred Trost, another exception was noted. Interview with Ellen Bezian & Fred Trost, students at Thomas M. Cooley School of Law, in Lansing, Mich. (May 16, 1996). When Pyro was teaching a seminar class, he had been joking with the class one day until it became clear that no one had spent much time preparing the material. *Id.* Pyro then closed his book and walked out of the room. *Id.* Joking was fine but only if the teaching and learning tasks were taken seriously. *Id.*

[144] Course bluebooks were not included in the data, thus, an evaluation of the grades Pyro gave is beyond the scope of this study.

[145] Fieldnotes from meeting with students at Thomas M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger).

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] It was very difficult to elicit any negative comments about Pyro's teaching. Fieldnotes from meeting with students at Thomas M. Cooley Law School (Feb. 23, 1994) (on file with Charles J. Senger). Although several students said that he only talked with his favorites, they were not willing to give examples or be quoted. *Id.* These comments do not appear supported by the transcripts but it is difficult to evaluate them without further information.

[151] *Id.*

III. DISCUSSION

This discussion proceeds on two levels; one planned in the original research design and one a consequence of studying the data. First, as planned, the data have implications for our own teaching. Clearly the teaching described here is not that of a Kingsfield[153] or even that of many traditional law school teachers. However, that difference provides the opportunity to review the common criteria for good teaching and to spark reflection on how elements of this teaching style can enhance our own teaching. Second, seeking meaning in this data led to implications for legal education generally. Those implications, in the author's opinion, include serious concerns about how much stress is used in legal education.

Implications for our own teaching will be addressed first. To help maintain perspective, comparisons will be made with criteria for good teaching drawn from both legal and educational psychology literature. The discussion will then move to possible broader implications for law school teaching.

A. Implications for our own Teaching

Each of us teaches, employing a unique combination of teaching techniques. One purpose of presenting these findings is to facilitate the reader's reflection in order to enhance the reader's own teaching. The advantage of looking at another's teaching style, rather than just at a text on teaching, is that we can see a different combination of teaching techniques in action. Often we can borrow some pieces to develop our own approach. Like our students, we are life-long learners; it is the nature of our profession. The resulting changes in our teaching, though seemingly small, can have a major beneficial impact on our students.[154]

Despite the advantages of looking at another's teaching, the process is made more difficult by our natural attachment to our current methods. Viewing another's teaching is much like trying to be a passenger while someone else is driving. No matter how skillful the driver, there will be much that rubs the passenger the wrong way. Little can be learned as long as our gaze is fixed on those things with which we disagree. When reflecting on Pyro's teaching, for example, an initial hurdle for the author was to get beyond initial disagreements both with the language being used and the selection of content being taught.

Initially it would appear that law professors would have little trouble gleaning positive insights from varied situations. Experience with cases allows us to learn from the legal tools used by judges even when we disagree with the

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[152] *Id.*

[153] *See generally* JOHN JAY OSBORN, THE PAPER CHASE (1971); THE PAPER CHASE (20th Century Fox 1973).

[154] Prior research indicates that our students may not be learning what we think that they are learning. Bryden, *supra* note 6; Senger, *supra* note 6. This leaves the door open for improvements and enhancements to the teaching process. *Id.*

way the tools are used in an individual case. Similarly, we should be able to learn from Pyro's use of language, gestures, classroom space, handouts, etc. even if we might disagree with the way that everything is fitted together in this one particular classroom. However, since experience in one sphere obviously does not always transfer to another sphere, more help may be needed to maintain a learning perspective as we review these findings.

One way to broaden our perspective is to guide our reflection, using research reports from both legal education literature and educational psychology. Both sources are represented here. One selection from the legal literature and two selections from educational psychology will be presented along with initial steps to match them against Pyro's teaching. With that as background, the reader then will be well positioned to tailor further reflection on Pyro's teaching to the particular demands of the reader's own teaching situation.

A quarter century ago, Kelso demonstrated the power of using class transcripts to enhance teacher development. In particular, his article[155] on case method teaching is a classic presentation of Harry Jones' teaching principles plus a transcript of the master teacher in action. Although partial quotation does not do justice to Kelso's section on teaching principles, the reader is assumed to have easy access to the balance of the article. Therefore the following portions can serve as a guide to begin our review of the findings. Kelso divides Jones' principles into two sections. One is on planning the course, the other on presenting it.

Planning the course is divided into four sections with the following headings:

> A. Determine and state goals in terms as behavioral as possible including emotional as well as intellectual targets.
> B. Develop hypotheses as to the students' present level of knowledge and skill, and existing or possible blocks to the development of that ability.
> C. Determine promising learning sequences and hypotheses on how rapidly students can be expected to acquire new behavior.
> D. Draft at least in outline form a "script" for each class.[156]

The planning sections are followed by five sections, "A" to "E," on presenting the class. Since subparts "B" and "C" closely relate to what Pyro does, they are quoted in full:

> A. Consider the class as but one part of a trilogy: the class; the hour after the class for informal discussion; and office consultation.
> B. Open the course with the rules of the game in your class.
> 1. Students may be misled by the materials, but they should never be misled as to what you expect of them.

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155 *See generally* Kelso, *supra* note 8.

156 *Id.* at 607-08.

2. Particularly when the class is large, make it clear that "when I call on someone else, you should imagine what you would have said if I had called on you."
3. Let the students know you plan to remain in the classroom for discussion, and let them know when you will have office hours for discussion.

C. In discussions, manifest respect for the students and attend to behavioral dynamics.
1. If a student is right, say so. You will reinforce not only the student who responded but also others who have been thinking the same thing, and those who are seeking standards for answers.
2. If the student is wrong, let him know it in some form, precisely and clearly, so he will not get the idea that one answer is as good as another.
a. This should be merely one manifestation of your concern for logical errors in class. You must be fair, but not overly indulgent of student carelessness or imprecision.
b. Don't abuse students when you let them know they have been wrong.
3. Attend carefully to what students are saying and how they are reacting to the class.
a. Treat their answers fairly and in high seriousness.
b. Don't be thinking of what you will say next while students are speaking.
4. Don't try to teach only the "A" students.

D. Dealing with the student who is not quite right.
E. Developing idealism toward the lawyer's professional role - the pervasive approach to legal ethics.[157]

Although it appears that a mental "script" may be used by Pyro, most of the planning principles are difficult to apply here because the planning process itself was not observed. By contrast, the classroom data lends itself more easily to review using the presentation principles.

The data does not support a finding that Pyro considers "the class as but one part of a trilogy." In part this may be due to circumstances because neither Pyro's classroom, nor any large classroom nearby, were available for use after the class. Likewise office hours are not emphasized.

The data also reveals Pyro took great pains to alert students to "the rules of the game" in his class. He told them what was expected in both class recitation; and in his essay and multiple choice examination questions. However, he did not tell students explicitly to put themselves in the place of the student called upon. Perhaps this was because he was not teaching first term students.

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[157] *Id.* at 609-11.

Likewise, as mentioned earlier, circumstances prevented him from remaining in the classroom after class.

Respect for the students, especially in reinforcing their answers, comes through repeatedly in the findings. Pyro attended "carefully to what students are saying" and reacted swiftly to "logical errors" that might mislead the class, although Jones' principles may contemplate that more would be done in all situations where a student has said something wrong. When the principles discuss dealing with students who are "not quite right," the same may be true in that Pyro may go to another student faster than Jones might.

In regard to teaching "only the 'A' students," the data is more mixed. On the one hand, some negative comments were received along this line. However, the textbook selected, the coverage only of the cases and not the other materials, the type of language used, and the extensive use of repetition all support an inference that Pyro was concentrating on students other than the "A" students.

Finally, "developing idealism toward the lawyer's professional role" is developed by Jones to include, in part, "procedural fairness," "equality before the law" and "discriminative individualization in cases."[158] Given the topics covered in Constitutional Law II, it is not remarkable that these ideas weave their way through the class.

Kelso's article yields further insights when read as a whole.[159] For example, the transcript of Hary Jones' teaching makes clear that Jones would not include as much "lecture" as Pyro includes when responding to student contributions. This can lead to reflection on how Jones' case method differs from Pyro's question and answer technique, and how each may differ from the methods that we use in our own classrooms.

Kelso's article also can be supplemented by educational psychology materials. For example, one article adds significantly to Kelso's treatment of respect and openness in teaching. Stephen D. Brookfield maintains that "[u]nderlying all significant learning is the element of trust."[160] He places teacher credibility and teacher authenticity at the heart of teacher trust.[161] He defines credibility as the "teacher's ability to present themselves as people with something to offer students . . . as possessing a breadth of knowledge, depth of insight, and length of experience that far exceeds the students' own."[162] Authentic teachers are seen as "real flesh-and-blood human beings" and four behaviors are taken as evidence of authenticity:

> (1) teachers' words and actions are congruent; (2) teachers admit to error, acknowledge fallibility, and make mistakes in full public view of learners; (3) teachers allow aspects of their personhood outside their

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158 *Id.* at 610.

159 *See generally* Kelso, *supra* note 8.

160 STEPHEN D. BROOKFIELD, THE SKILLFUL TEACHER 163 (1990).

161 *Id.*

162 *Id.* at 163-64.

> role as teachers to be revealed to students; and (4) teachers respect learners by listening carefully to students' expressions of concern, by taking care to create opportunities for students' voices to be heard, and by being open to changing their practice as a result of students' suggestions.[163]

These guidelines cover much of what Pyro does so well. As noted, he took great pains to tell students in advance what would happen in class and the procedure involves. The course, the classes, the recitations, and the reviews were conducted according to what he had promised. Even though his own speech filled most of the class periods, student comments were extensively supported by both verbal and non-verbal affirmations. However, these guidelines also highlight why it was important that when Pyro made a mistake, he apologized. Likewise they help explain the importance of his few stories largely being at his own expense. Using Brookfield's framework, it is no wonder that students identify trust as a key feature of this teaching. Again, each of us can reflect on how well our own teaching would fare under the same scrutiny. Can we adopt changes that will increase student trust without sacrificing our educational objectives?

A second selection from educational psychology provides a more general criteria for excellent teaching. On older rating scales for effective teachers, the top characteristics were: "cooperation (helpfulness, loyalty), personal magnetism, personal appearance, breadth and intensity of interest, considerateness, and leadership."[164] On their face, it would appear Pyro would do well on such rating scales. However, perhaps more importantly, Pyro does well when matched to a more recent sets of attributes and teaching principles. The work of Yelon[165] is selected here as a guide because it is written in a way that is very accessible even to those who are not steeped in educational psychology on a daily basis; there are no long reviews of the literature, only focused, practical guidance. It has the added advantage that, in the author's experience, Yelon practices what he preaches. Yelon stresses the following four attributes of an excellent teacher: deep concern about their subject matter; concern about all their students; enjoyment of their job; and implementation

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[163] *Id.* at 164. Characteristics of a "caring teacher" also appear in legal journals. *See, e.g.*, Douglas D. McFarland, *Students and Practicing Lawyers Identify The Ideal Law Professor*, 36 J. LEGAL EDUC. 93, 96 (1986). However this description does not fit Pyro as well as Brookfield's. For example, the description states, in part: "[a]lthough subject matter has some importance, the overriding concern is with spotting students in distress and encouraging them, rather than castigating their efforts." *Id.* Pyro, however, made subject matter more central. He ignored raised hands where necessary to develop the material and, at least in the classroom, did not appear to give more attention to distressed students than to others. Fieldnotes from Philip J. Prygoski's Constitutiona Law II class at Thomas M. Cooley Law School (Winter 1994) (on file with Charles J. Senger).

[164] Donald M. Medley, *The Effectiveness of Teachers, in Research on Teaching* 11, 13 (Penelope L. Peterson & Herbert J. Walberg eds., 1979).

[165] *See generally* STEPHEN L. YELON, POWERFUL PRINCIPLES OF INSTRUCTION (1996).

of powerful teaching principles.[166] Although not meant to be an exhaustive list, Yelon also specifies ten powerful principles of teaching:

1. *Meaningfulness*. Motivate students by helping them connect the topic to be learned to their past, present, and future.
2. *Prerequisites*. Assess students' level of knowledge and skill and adjust instruction carefully, so students are ready to learn the material at the next level.
3. *Open Communication*. Be sure students find out what they need to know so they can focus on what to learn.
4. *Organized Essential Ideas*. Help students focus on and structure the most important ideas, to be able [to] learn and recall those ideas.
5. *Learning Aids*. Help students use devices to learn quickly and easily.
6. *Novelty*. Vary the instructional stimuli to keep students' attention.
7. *Modeling*. Show students how to recall, think, act, and solve problems so that they are ready to practice.
8. *Active Appropriate Practice*. Provide practice in recalling, thinking, performing, and solving problems so that students apply and perfect their learning.
9. *Pleasant Conditions and Consequences*. Make learning pleasing, so that students associate comfort with what is learned ; and make learning satisfying, so that students keep learning and using what is learned.
10. *Consistency*. Make objectives, tests, practice, content, and explanation consistent, so that students will learn what they need and will use what they have learned outside of the instructional setting.[167]

Matching these attributes and principles to the findings, reveals a good, although less than perfect, fit with Pyro's style. Most of the listed attributes and principles are supported by the findings, at least indirectly. However "active appropriate practice" and "consistency" have much weaker support in the findings than others. Pyro did hand out sample multiple choice questions, went over the questions in class, and lectured on the differences between answering essay and multiple choice questions. Still student comments about the essay examination questions indicate that more directed practice would be helpful. In addition, there is some question of whether the practice is closely related to real world tasks. Likewise for "modeling," Pyro included oral examples of what

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[166] *Id.* at 2-3. A similar list can be found in PAUL RAMSDEN, LEARNING TO TEACH IN HIGHER EDUCATION 89 (1992). Ramsden also notes it is a myth: "that unpopular, even dreadful, teachers in higher education are *actually* better than popular and helpful ones (because the latter force students to be "independent," while the former "spoonfeed")." *Id.* at 88.

[167] Yelon, *supra* note 165, at 3.

he wanted the students to do on the written essay questions and how they might do it. This would have been a more complete presentation if written examples were included in the discussion.

By comparison, there is much more in the findings to relate to the other attributes and principles. "Meaningfulness" is covered by references to current events and the bar examination, along with a few stories and a couple of references to prior courses. "Prerequisites" largely were covered since Pyro had many of the students for a prior class. This was supplemented by his comments to students before and after classes. "How's it goin'?" was a frequent question to students outside of class and he followed up with more questions, if necessary, to show that he genuinely wanted to know how they were doing. "Open communications" and "organized essential ideas" are addressed by the repeated use of introductory overviews coupled with an announced structure for analysis of the cases. "Learning aids" included a couple of chalk board diagrams, a few stories, a few hand-outs, and a movie about the *Cruzan*[168] case. Each of these learning aids and changes of pace seemed well thought out. "Novelty" is seen especially in Pyro's use of language. Pyro's relatively infrequent use of learning aids also maximized their impact on the students when they were used. "Pleasant conditions and consequences" overwhelmingly are supported by the findings. The repeated supportive comments are one example. Moreover, the casual speech used in the class room made the environment more supportive and comfortable. Finally, the almost total absence of negative reprimands made the class room a more pleasant place to be.

Yelon's principles in part reaffirm those presented by Kelso but like Brookfield's, they also highlight other aspects of the teaching. For example, even though Pyro does not use the trilogy advocated in Kelso's article, Pyro does use the time before class to check prerequisites. According to Yelon,[169] this can be extremely important because something may have happened in another class or around the school, which has an impact on the class; and yet the professor may be unaware of it unless the professor makes a time for checking with the students. Depending upon what has happened, waiting until after class to learn about it may diminish the value of the information.

In addition, Yelon's discussion of "learning aids," and especially "novelty," bring a different perspective to what is implicit in Kelso's presentation of planning principles. For the author, these sections helped to understand Pyro's use of language, handouts, the chalk board, and discipline measures. For each of these, the author's initial impression was to disagree with Pyro's practices. The slang seemed excessive. Given the typically cramped lecture hall student writing space, more frequent handouts appeared appropriate to avoid the juggling of multiple texts. The chalk board dominated the front of the room

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[168] *Cruzan*, 497 U.S. at 261.

[169] Yelon, *supra* note 165, at 14.

and seemed, in contrast, under used. Finally, persons who habitually came in late looked like good candidates for some disciplinary measures.

For each of these classroom aspects, however, further reflection revealed that the author was underestimating the power of novelty. Although it is not a technique that the author would adopt, Pyro's unusual use of slang did make the terms of art stand out in stark contrast. The same was true for the infrequent handouts and chalk board diagrams. The few that were used emphasized their importance. Even the power of the discipline incident in the findings appears to flow from its novel aspects. First, discipline was rarely administered so it again stood out. In addition, the way it was done, moving away from the podium, etc., was based on a dramatic change in Pyro's ordinary classroom routine.

Perhaps these are good illustrations of why Yelon's book, like the work of Kelso and Brookfield, merits further study. The principles are fleshed out far beyond the outline given here. However, for purposes of this article, it suffices to provide a good start. Taking time to develop further connections is one way for the reader to gain further insight into both Pyro's teaching and all the principles, especially as they apply to the reader's own teaching.

The author also found that the principles of Yelon, Kelso, and Brookfield helped to avoid confusion between teaching techniques and what was being taught. It was easy to become caught in a disagreement over the content. Especially in upper level courses, many of us include materials from law and economics, feminist critiques, critical legal studies, psychology, etc. Constitutional law obviously is fertile ground for all of these, so much so that it can be questioned whether the topics merely expand the breadth of a course or whether they are essential for an in-depth presentation. As Kelso pointed out, the first step in planning a course is to determine its goals.[170] It appears that Pyro's goals were shaped, in part, by the students he was teaching. For those students, it may have been important to try to develop the deep structure of constitutional law directly rather than through the use of comparisons and contrasts. However, the techniques used to teach the goals can be a source of learning even for those of us who might disagree with the goals.[171]

B. Implications for Legal Education Generally

Although it is important to reflect on how Pyro's teaching might help us better understand our own teaching, still his actions raise a broader issue. Good teaching attends to the needs of the students. Pyro's numerous teaching awards indicate that students believe that he is responding well to their needs. When we examine his teaching, therefore, it should tell us something about student needs, including needs flowing from the effects of their prior year of legal

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[170]Kelso, *supra* note 8, at 607.

[171]Palmer argues that teachers learn even more when they consider situations and practices far different from their own. *See* PARKER J. PALMER, TO KNOW AS WE ARE KNOWN 114-16 (1993).

education. If that is granted, what does Pyro's teaching indicate about the effect of law school education? From looking at his teaching decisions, what needs is he addressing?

At first Pyro's teaching technique was an enigma to the author. Here was a professor whose published writings[172] demonstrated his ability to present legal analysis on a number of levels. Obviously he had the knowledge base necessary for more traditional teaching. In addition, his responses to students indicate that he could conduct a socratic exchange if he wished. The discipline incident indicates that he knows how to dial up the stress level if he wished. But despite that background, and despite the usual expectations in a law school classroom, his teaching did not fall into one of the expected patterns.

Pyro's approach had a very different emphasis. The findings underline Pyro's respect for the students, his bending over backward to be supportive, his calm approach to volatile topics, and his usually subdued approach to discipline. Rather than using stress to peak performance, all these aspects of his teaching can be seen as antidotes to doses of stress already received in law school.

This view of Pyro's teaching matches where his course fits in the overall curriculum. His course is in the term immediately after students have completed their first year of law school and thus responds to what students experience in the first year. Instead of spoon feeding students, his teaching may be a form of intensive care aimed at restoring what was torn apart during the prior terms. Viewed from that perspective, his teaching sparks reflection on how we use the first part of law school and whether changes might not be advisable.

The first year of law school involves some stress that is inevitable. Students want to learn how to think like lawyers. Seldom do they appreciate how wrenching it is to change such an intimate part of themselves. Different people cope in different ways but it is no surprise that titles like "Bramble Bush[173]" are associated with the process.

If stress is a concern, then professors have to be even more careful in teaching environments designed as this one is. The only doors are at the front of the room. Once in a seat, students cannot leave the room without walking down long diagonal aisles which lead almost right to the speaking podium. In addition, the seats are closely spaced with limited ability to swivel. Coupled with the limited curvature of the seat rows, this means that students are forced to look forward without significant eye contact with other students. Even if the professor remains at the front of the room, the situation lends itself to the students feeling that they are a captive audience and that any of them can easily be isolated during an interaction with the professor. If the professor moves away from the podium, and stands even closer to one of the aisles, the cornering effect becomes even more powerful. Recalling the earlier discipline incident

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[172]Prygoski, *supra* note 7.

[173]*See generally* LLEWELLYN, *supra* note 2.

discussed in the findings, this may be a further explanation of the impact of Pyro's seemingly small movement away from the podium.

Beyond the inevitable stress inherent in the learning process, and beyond the additional stress that may be imposed by the design of the classroom, more stress can be added by the teaching methods used. All of us have seen situations where it seems that students need a push to realize what they can do. Our verbal skills make it easy for us to ratchet up the stress level. Done right, the results can be electrifying, exhilarating for all involved. Those are teaching moments that we remember.

As wonderful and classic as those teaching moments may be, Pyro's teaching raises a caution. Along with what we think that we are teaching may come some learning outcomes and costs that we do not intend. The intellectual excitement may mask dangerous side effects. Stress is like any drug, useful in certain circumstances but dangerous due to the potential for overdose or addiction. Both may be happening in our teaching. Students may not only be traumatized by the impact of the stress but, ironically enough, they may also be hooked on its use. Even if they suffer its adverse effects, still our use of stress teaches them to use it. We model its use, particularly in the context of obtaining peak performance. Is it any wonder if they adopt it as a way to goad both themselves and others? Do we devote enough time to teaching them the limits and dangers of using stress?

Warnings about stress can be even more important because, as is the case for most drugs, persons develop a tolerance over time. That tolerance helps them handle stress but it also means that they need more to spur peak performance. Students thus can get hooked on the use of more and more stress. It is no surprise that this can lead to problems for themselves and others. What is surprising is that we in law school do not modify our teaching or at least do more to provide safeguards and warnings.

This article is not the place to revisit the civility debate, the phenomenon of mid-career burnout, the divorce rates or substance abuse problems of the profession. But Pyro's teaching decisions at least raise the question of whether we may be planting seeds that will choke our students just as they reach the time when they could make their greatest profession contribution. Our use of stress in teaching may be very short sighted indeed.

If our teaching is as efficient as the research indicates, if students really learn that much in the first six months under the present system, should we consider the possible implications of slowing down? If we have three years, could we accomplish what we do now but without many of the side effects of stress? This is not to ignore those students who need an extra push to realize what they can do. Nor is it to deny that some tracks in law require preparation in handling

large amounts of stress. But does admitting those things mean that the present system is best for all, or even most students?[174]

C. *Conclusion*

This study started as an effort to see what qualitative methods would uncover if focused on law school teaching. In addition, the study was intended to probe what student teaching awards might be telling us. Finally, the study was designed to examine teaching at a law school that is underrepresented in the literature, a law school outside the top twenty. The findings serve those goals.

However, at least for the author, more came from this study. Some of the data indeed provided ideas for improving the author's teaching. Perhaps even more important, the data leads to reflection on our use of stress in law school. Rather than concentrating on teaching after the first year, the data quickly raises questions about first year teaching. Many of the issues that could be raised go far beyond the limits of this study or this article. But this data provides another opportunity for us to question whether we should devote more research to those issues. It may be that more warnings or instruction about stress should be given. It may be that our teaching methods should be modified. It may be that the present system is a good compromise. The bramble bushes may need warning labels, pruning, or even selective burning. Whatever the answer, more research is needed to put our approaches to those issues on a firmer foundation.

Finally, the author would like to acknowledge a special debt to Professor Prygoski. None of us in teaching is perfect. Having one's teaching put under a microscope, unedited, is hard enough. Having results, favorable or not, spread before one's peers is beyond the call of duty. As we hash these results back and forth, as we reflect on how they can help us improve our own teaching, and law school teaching in general, we should remember our debt of gratitude to Pyro who made it possible.

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[174]Some students may be more susceptible than others to the ill effects of stress. In particular, some students may have greater reserves for dealing with stress. For example, a student blessed with substantial family financial resources may have more time and energy to devote to the challenges of a legal education.